IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

TUESDAY, THE 19TH DECEMBER 2006 / 28TH AGRAHAYANA 1928

WP(C).No. 33608 of 2006(A)

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PETITIONER:

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V.R. WOOD ART LTD., CEPZ, KAKKANAD, ERNAKULAM, REPRESENTED BY ITS MERCHANDISER, MR. M. MANOJ KUMAR.

BY ADV. SRI.ANTONY DOMINIC

RESPONDENTS:

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1. SALES TAX OFFICER, II CIRCLE, ERNAKULAM.

2. DEPUTY COMMISSIONER OF COMMERCIAL TAXES (APPEALS), ERNAKULAM.

3. THE STATE OF KERALA, REPRESENTED BY THE SECRETARY (TAXES), GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM.

GOVT. PLEADER SRI. JULIAN XAVIER.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN, J.

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W.P.(C) NO. 33608 OF 2006

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DATED THIS, THE 19TH DAY OF DECEMBER, 2006.\

J U D G M E N T

Petitioner challenges an interim order passed by the Deputy Commissioner of Commercial Taxes (Appeals), Ernakulam, under Section 5 (1) of the Central Sales Tax Act, inter alia contending that even though the export might have been done by the Export House for and on his behalf, he should be treated as a deemed exporter and exemption granted. In support thereof, he produced a copy of the judgment of the apex court in **C T Limited and another vs. Commercial Tax Officer and others** ((1997) 104 STC 94). However, in the present case, the question still remains for consideration is as to whether petitioner has satisfied the conditions for claiming exemption by filing H form. The said decision is not an answer to the issued raised. Even though it is contended by the learned counsel for the petitioner that he has produced alternate forms of evidence by way of bill of lading, shipping bills etc., that is a matter for the statutory authority to consider in the final hearing.

2. Admittedly, when the petitioner has not furnished H form, he cannot straight away place reliance on the said decision and say that he is entitled for exemption under Section 5(1) and say that the matter is squarely covered. According to the petitioner, Ext.P6 order has been passed in a mechanical way. But as I have already stated above, on the facts as revealed from the records the appellate authority found a prima facie case and considering the balance of convenience, has passed an interim order directing the petitioner to pay only 50% of the amount, pending further consideration of the appeal and granted a stay of recovery of the balance amount. I do not find that the said order, in such circumstances, is liable to be interfered with in a petition under Article 226 of the Constitution of India.

3. However, considering the fact that the appellate authority has directed the petitioner to pay 50% of the amount before 16.12.2006 and the fact that an amount of more than Rs. 16 lakhs will have to be remitted by the petitioner in due compliance of the said order, I think interest of justice demands a slight modification of the interim order passed by the appellate authority regarding the manner of payment of the said amount.

4. Accordingly, it is ordered that if the petitioner pays an amount of Rs. 7 lakhs (seven lakhs) within a period of one month from today and pay

the balance amount towards the 50% of the tax dues as directed by the appellate authority within one month thereafter, the stay granted by the appellate authority will continue with all force. Petitioner has necessarily to furnish security as directed in Ext.P6 order.

The writ petition is disposed of as above.

P.R. RAMAN,
(JUDGE)

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